# CURRENT DECISIONS

CONSTITUTIONAL LAW—CONSTRUCTION—INITIATIVE AND REFERENDUM.—The petitioner was nominated by a state senatorial district as delegate to a state constitutional convention. The state constitution provided for the re-districting of the state by the General Assembly, or, on its failure to act, by the Governor, the Secretary of State, and the Attorney-General. Mo. Const. art. 4, sec. 7. Subsequent to the petitioner's nomination, the State was re-districted by the executive officers, and thereafter the Secretary of State refused to file the petitioner's nomination. *Held,* (three judges *dissenting*) that the constitutional provision for re-districting the State by the executive officers was repealed by the Initiative and Referendum Amendment (Mo. Const. art. 4, sec. 57), and that the petitioner could compel by mandamus the filing of his nomination. *State, ex rel. Lashly, v. Becker, Secretary of State* (1921, Mo.) 235 S. W. 1017.

In holding that the initiative and referendum placed all grants of legislative power in a single forum, and thereby repealed the grant to the executive department, the majority opinion seems to violate some of the basic canons of constitutional construction. All parts of a law should be read together and harmonized if possible. *Wheeler v. Herbert* (1907) 152 Calif. 224, 92 Pac. 353. To effect an amendment of an existing constitutional provision the language must be clear and unmistakable, the presumption being against a repeal by implication. *People, ex rel. Murphy, v. Field* (1919) 66 Colo. 367, 181 Pac. 526. When a constitutional provision will bear two constructions, one of which is consistent with, and the other inconsistent with, an intention clearly expressed in a previous section, the former should be adopted, so that both provisions may stand. *Chance v. Marion County* (1872) 64 Ill. 66.

CONSTITUTIONAL LAW—EXERCISE OF POLICE POWER FOR PURELY AESTHETIC PURPOSES.—In a mandamus proceeding the plaintiff sought to compel the Commissioner of Buildings to issue a building permit for store houses. The defendant pleaded an ordinance which prohibited the construction of any business house in a zone having more residences than business houses within a radius of 300 ft. unless three-fourths of the owners of such dwellings agreed to the erection and the building inspector approved of the design of the proposed structure. *Held,* that the ordinance was unconstitutional and that mandamus should issue. *Spann v. City of Dallas* (1921, Tex.) 235 S. W. 513.

Purely aesthetic purposes have not been considered a sufficient basis for an exercise of the police power. See COMMENTS (1920) 30 YALE LAW JOURNAL, 171. While the distressing effects of obnoxious odors and annoying noises are recognized by the courts as injurious to public health, the significance of the reaction of ugly surroundings upon the nervous system apparently is not appreciated in the realm of law. See NOTES (1921) 34 HARV. L. REV. 419. With the development of modern community interest, as manifested by desires for "civic centers," "zoning" ordinances, etc., it is to be hoped that the courts may recognize that attempts to effect such a public purpose are certainly for the public welfare. The European example is worthy of emulation even if state constitutional amendment is necessary.

CRIMINAL LAW—BURGLARY—BREAKING BY ONE HAVING AUTHORITY TO ENTER.—The defendant was an intimate associate and friend of the owner of a dwelling-house. Her privilege of entering the house was altogether free and unlimited. She entered the house and stole a certain sum of money. In the trial court she